

FILED

07/15/2022

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Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: PR 22-0001

JUL 11 2022

Molly Woodman  
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ANGIE SPARKS, Clerk of District Court  
By *Maryna Sparks* Deputy Clerk

Attorney for Defendant

**MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY  
BEFORE THE HONORABLE MIKE MENAHAN**

STATE OF MONTANA,  
Plaintiff,  
v.  
JAMES WAYNE HARTWICK,  
Defendant.

Cause No. ADC-21-489

**DEFENDANT'S MOTION TO  
DISQUALIFY JUDGE &  
REQUEST FOR RECUSAL**

COMES NOW, Defendant, James Wayne Hartwick, by and through his counsel of record, Molly Woodman, and hereby submits this Motion to Disqualify Judge and Affidavit in Support of Motion to Disqualify. Defendant respectfully requests an Order recusing The Honorable Mike Menahan as the presiding judge in this matter, pursuant to Mont. Code Ann. §§ 3-1-803 and -805.

**FACTUAL BACKGROUND**

Pursuant to Mont. Code Ann. § 3-1-803, factual basis for this Motion is attached in an Affidavit as *Exhibit A*. Defendant is scheduled for Sentencing on July 13, 2022 at 9:00 a.m.

**ARGUMENT**

Mont. Code Ann. § 3-1-805 is the governing statute for disqualification of a judge in a Montana court. The statute states:

1. Whenever a party to any proceeding in any court shall file an affidavit alleging facts showing *personal bias or prejudice of the presiding judge, such judge shall proceed no further in the cause*. If the affidavit is filed against a district judge, the matter shall be referred to the Montana Supreme Court. If the affidavit is in compliance with subsections (a), (b), and (c) below, the Chief Justice shall assign a district judge to hear the matter. If



the affidavit is filed against a judge of a municipal court, justice court, or city court, any district judge presiding in the district of the court involved may appoint either a justice of the peace, a municipal judge or a city court judge, to hear any such proceeding.

(a) The affidavit for disqualification must be filed more than thirty (30) days before the date set for hearing or trial.

(b) The affidavit shall be accompanied by a certificate of counsel of record that the affidavit has been made in good faith. An affidavit will be deemed not to have been made in good faith if it is based solely on rulings in the case which can be addressed in an appeal from the final judgment.

(c) Any affidavit which is not in proper form and which does not allege facts showing personal bias or prejudice may be set aside as void.

(d) The judge appointed to preside at a disqualification proceeding may assess attorneys fees, costs and damages against any party or his attorney who files such disqualification without reasonable cause and thereby hinders, delays or takes unconscionable advantage of any other party, or the court.

Mont. Code. Ann. § 3-1-805 (emphasis added). Disqualification in light of personal bias or prejudice of the presiding judge is also required by the Montana Code of Judicial Conduct Rules 2.12, 2.2, 2.3 and 2.4

A criminal defendant has the right to fair trial as part of the right to due process.

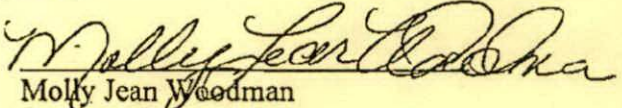
*Caperton v. A. T. Massey Coal Co.*, 556 U.S. 868, 876, 129 S. Ct. 2252, 2259 (2009). "The requirement of a fair trial in a fair tribunal includes the requirement that any judge who is biased or partial with regard to a particular matter or party be disqualified from hearing the case." *State v. Dunsmore*, 2015 MT 108, ¶ 11, 378 Mont. 514, 347 P.3d 1220. "A claim for disqualification of a judge must be brought within a reasonable time after the moving party learns the facts forming the basis for a claim that the judge should be disqualified." *Id.* at ¶ 20.

Defendant asserts that The Honorable Mike Menahan has exhibited both a personal bias and prejudice in the statements he made to the First Judicial District Adult Drug Treatment Court Team on June 28, 2022. See *Exhibit A*. Not only has Judge Menahan taken a position on Defendant's sentence prior to hearing argument of the parties, he has exhibited a desire to prioritize his personal beliefs and interests over Montana law. To allow Judge Menahan to preside over Defendant's Sentencing would be to impede Defendant's due process rights, as well as his right to counsel, should Judge Menahan refuse to hear argument from Defense Counsel at Sentencing.

Defendant lacks confidence in his right to due process and a fair tribunal, and therefore respectfully requests an Order disqualifying Judge Menahan and recusing him from the above-entitled matter. While this Motion is being filed within thirty days of Defendant's Sentencing, Defendant asserts that this issue was raised within a "reasonable time after [Defendant] learned the facts forming the basis for a claim that the judge should be disqualified." *Dunsmore* at ¶ 11. Defense Counsel made attempts to bring the issue to this Court prior to the filing of this Motion, which was significantly delayed by the State's Counsel's objection to the meeting itself. See *Exhibit B*.

While the State's Counsel was making herself available for other hearings throughout the week, she refused to make herself available for a brief discussion with Judge Menahan regarding this issue. This and the timing in which this issue arose are the underlying reasons for the filing of this Motion just two days before Defendant's Sentencing. Regardless, Defendant asserts that this issue was brought to the attention of this Court within a reasonable time, in compliance with Montana law.

Respectfully submitted this 11<sup>th</sup> day of July, 2022

  
Molly Jean Woodman  
Attorney for Defendant



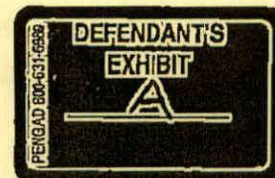
**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 11 day of July, 2022, a true and accurate copy of the foregoing *Motion to Disqualify Judge* was delivered to the following:

**Delivery Type: Hand delivery & E-mail**

Fallon Stanton  
Lewis & Clark County Attorney's Office

  
\_\_\_\_\_  
Office of State Public Defender



Molly Woodman  
Office of State Public Defender  
Regional Office, Region 4  
P.O. Box 200145  
139 N. Last Chance Gulch  
Helena, MT 59620  
Phone: (406) 444-0104

Attorney for Defendant

**MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY  
BEFORE THE HONORABLE MIKE MENAHAN**

STATE OF MONTANA,  
Plaintiff,  
v.  
JAMES WAYNE HARTWICK,  
Defendant.

Cause No. ADC-21-489

**AFFIDAVIT OF  
MOLLY JEAN WOODMAN**

**COMES NOW**, Molly Jean Woodman being duly sworn upon oath and states:

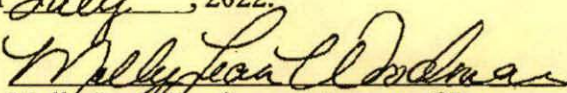
1. I am a licensed attorney in active status within the State of Montana and a Bar Number of 48799766.
2. I am over eighteen years of age and have personal knowledge of the facts contained herein.
3. I am employed with the State of Montana under the Office of the State Public Defender as an Assistant Public Defender in Helena, Montana, and I am the counsel of record in the above-entitled matter.
4. On June 28, 2022, I was present in the courtroom of The Honorable Christopher D. Abbott in Lewis and Clark County, Montana to participate in the First Judicial District Adult Drug Treatment Court (hereinafter "ADTC") staff meeting.
5. My client, James Wayne Hartwick, had been previously accepted as a participant in the First Judicial District ADTC. During the staff meeting on June 28, 2022, Judge Mike Menahan entered staff meeting and made the following statements:



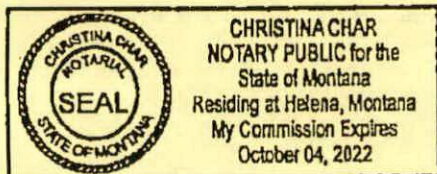
- a. Judge Menahan will be sentencing a defendant, James Wayne Hartwick, on July 13, 2022, and he is aware that an argument will be made for Mr. Hartwick to participate in the Frist Judicial District ADTC;
  - b. Judge Menahan has already determined that he will not sentence Mr. Hartwick into the First Judicial District ADTC, and in fact, will not consider this option for any defendants being sentenced on a charge of Driving Under the Influence of Alcohol or Drugs (4<sup>th</sup> offense); and
  - c. Judge Menahan believes that the presence and utilization of DUI treatment courts will cause the WATCH Program to go out of business and believes that the WATCH Program is essentially a requirement for defendants being sentenced for a charge of Driving Under the Influence of Alcohol or Drugs (4<sup>th</sup> offense). See *Exhibit C*.
6. On June 28, 2022, I informed my supervisor, Suzanne Seburn, of the statements that Judge Menahan had made at the staff meeting. Ms. Seburn and I met on July 1, 2022, to discuss the potential disqualification issue.
7. I sent an e-mail to Judge Menahan on July 6, 2022 at 12:13 p.m., requesting a meeting with Judge Menahan and the County Attorney's Office to discuss this issue. Judge Menahan made himself available on July 6, 2022 to discuss the issue in his chambers. Per the State's Counsel's objection, that meeting was cancelled and rescheduled for the following week. See *Exhibit B*.
8. I sent an e-mail Judge Menahan on July 6, 2022 at 2:01 p.m., requesting a meeting sometime before the following week. As of July 11, 2022, I have received no response to that request. *Id.*
9. On July 11, 2022, I filed the Motion to Disqualify and Request for Recusal of The Honorable Mike Menahan.
10. Mr. Hartwick is scheduled for Sentencing on July 13, 2022 at 9:00 a.m.

Further, the Affiant sayeth not.

DATED this 11<sup>th</sup> day of July, 2022.

  
Molly Jean Woodman, Attorney of Law

Sworn to and subscribed before me this 11 day of July 2022,  
2022 by Christina Char.



Notary Public for the State of Montana  
Printed name of notary Christina Char  
Title or rank: Office Manager  
Residing at Helena, MT  
My Commission Expires: 2022

**CERTIFICATE OF COUNSEL OF RECORD**

Molly Jean Woodman, as counsel of record in the above-entitled, certify that this affidavit was made in good faith as required by Mont. Code Ann. § 3-1-805(1)(b).

DATED this 11<sup>th</sup> day of July, 2022.

Molly Jean Woodman  
Molly Jean Woodman, Attorney of Law